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No. 87- ___

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

PRATT & WHITNEY AIRCRAFT DIVISION,
UNITED TECHNOLOGIES CORPORATION,
Petitioner,

v.

CHRISTINE BALDRACCHI,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTION PRESENTED

Is a state-law right of direct suit for discharge from employment in retaliation for exercising rights provided by a state workers' compensation statute preempted by § 301(a) of the Labor-Management Relations Act, 29 U.S.C. § 185(a), when the plaintiff is an employee protected by a collective-bargaining agreement which provides a just cause standard for discharge and an exclusive and mandatory grievance/arbitration enforcement procedure for any alleged wrongful discharge, and when the relief sought requires an interpretation of the agreement?

PARTIES AND RULE 28.1 LISTING

The caption of the case in this Court contains the names of all the parties. Petitioner is an unincorporated division of United Technologies Corporation, a Delaware corporation. United Technologies Corporation has no parent corporation. As of August 20, 1987, no corporate entity owned an equity interest in United Technologies Corporation of five percent (5%) or more.

United Technologies Corporation does own voting securities in a large number of domestic and foreign corporations. A list of those corporations and their respective States or countries of incorporation is attached as Appendix F to this Petition.

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v.

CHRISTINE BALDRACCHI,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner, Pratt & Whitney Aircraft Division, United Technologies Corporation, respectfully prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Second Circuit entered in this proceeding.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit is reported at 814 F.2d 102. The judgment and opinion of the United States District Court for the District of Connecticut is not reported but is contained in the Appendix. (App. 11a to 15a).

JURISDICTION

The decision of the United States Court of Appeals for the Second Circuit was issued March 17, 1987. A timely Petition for Rehearing and Suggestion for Rehearing *en banc* was denied on May 28, 1987, and this Petition was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

29 U.S.C. § 185. Suits by and against labor organizations.

(a) Venue, amount and citizenship.

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(June 23, 1947, C.120, Title III, § 301, 61 Stat. 156)

STATEMENT OF THE CASE

Until her discharge on or about February 13, 1986, Respondent, Christine Baldracchi, was employed by Petitioner under the terms and conditions of a collective-bargaining agreement between Petitioner and Lodge 1746 of the International Association of Ma-

chinists. The agreement prohibits discharge of a covered employee except for "just cause" and contains a comprehensive grievance and arbitration procedure as the exclusive remedy specifically for, among other things, disputes over vacation pay and, as the district court found (App. 13a, 14a), any grievance alleging wrongful discharge.[1]

Respondent filed suit against Petitioner on May 2, 1986, in the Superior Court of the State of Connecticut. In her complaint (App. 20a - 21a), she claimed that her discharge by Petitioner for refusing available work and willful misconduct, and the consequent denial to her of termination benefits and vacation pay, constituted a violation of Conn.Gen.Stat. § 31-290a.[2] Respondent sought a revision to her employment record, unspecified termination benefits, vacation pay, punitive damages, and attorneys' fees but not reinstatement or back pay. App. 21a. By filing

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[1] References in this Petition and in the Second Circuit's opinion to the "just cause" discharge provision refer to excerpts from the actual text of the collective-bargaining contract under which Respondent was employed, which were set forth for the first time in an addendum to Petitioner's opening brief to the Second Circuit. Although Respondent objected to the submission of the text of the contract since it was not part of the district court record, no motion to strike was filed and the bearing of the contract terms upon the issues in the case was addressed fully by both parties to the appeal and provided background which was relied upon by the Second Circuit. *See* App. 6a, 7a.

[2] Set out in full in the Appendix, that statute prohibits any covered employer from discharging an employee for exercising his or her rights under the state workers' compensation law and allows an aggrieved person to file a civil action directly in Superior Court or an administrative complaint. App. 18a-19a.

the civil action in state court, Respondent did not use the grievance and arbitration mechanism under the collective-bargaining agreement available to employees claiming wrongful discharge.

On June 5, 1986, upon verified petition, Petitioner removed the case to the United States District Court for the District of Connecticut. On the authority of this Court's decision in *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985), the district court, per Judge Alan H. Nevas, denied Respondent's motion to remand and granted Petitioner's motion to dismiss. Judge Nevas found that Respondent's suit was actually one for breach of a collective-bargaining agreement arising under and, therefore, pre-empted by § 301(a) of the Labor Management Relations Act, 1947 (LMRA), 29 U.S.C. § 185(a). The court also found the suit barred by Respondent's failure to exhaust the grievance procedure under the collective-bargaining agreement. In specific terms, the court ruled as follows:

> In this action, the issue is whether the plaintiff was properly discharged from employment. Her employment was governed by a collective-bargaining agreement between her union and the defendant. It contained a grievance and arbitration procedure which provided the exclusive method by which an employee could challenge the propriety of the decision to terminate her employment. The plaintiff's claim of retaliatory discharge is really a claim for breach of her collective-bargaining agreement. Thus, as the state tort claim is inextricably intertwined with, related to and affects her employment relationship, it is pre-empted by § 301. To allow an em-

> ployee to bypass the grievance and arbitration procedure by filing a state law action for retaliatory discharge would cause the arbitration process to lose most of its effectiveness. The plaintiff has accordingly failed to state a claim upon which relief can be granted and the action must be dismissed. (App. 14a - 15a).

On appeal, a panel of the United States Court of Appeals for the Second Circuit reversed. Although expressly recognizing that "other circuit courts have reached varying conclusions on this issue" (App. 10a) and conceding that, at a minimum, "determining what relief [Respondent] would be entitled to if she prevailed in the state courts might involve examination of the labor contract" (*Id.* 7a), the court found Respondent's state-law suit not pre-empted by § 301. In the court's view, Respondent's suit was independent of the collective-bargaining agreement, did not require examination of the labor agreement's "just cause" discha ge provision and thus avoided pre-emption even under *Allis-Chalmers*. *Id.* 6a. The court rejected Petitioner's argument that Respondent should make use of available remedies under the grievance-arbitration procedure of the collective-bargaining agreement. *Id.* 7a - 8a. This Petition followed.

REASONS FOR GRANTING THE WRIT

I. THE FEDERAL COURTS OF APPEALS, AND OTHER COURTS, ARE IRRECONCILABLY DIVIDED OVER THE QUESTION PRESENTED

It is imperative that the federal limits imposed by LMRA § 301 pre-emption on state-law retaliatory discharge actions for unionized employees—such as the right of direct suit at issue in this case—be defined

with precision and enforced with consistency. Allegations of retaliatory discharge enmesh the parties in a dispute over perhaps the single-most consequential event in the collectively-bargained employment relationship, namely, that relationship's involuntary termination. The Court of Appeals in this case called the question presented an "important" one (App. 1a), and the Seventh Circuit *en banc*, in disagreeing with the result reached by the Second Circuit, agreed that cases such as this "present issues of extreme importance affecting workers covered by collective bargaining agreements." *Lingle v. Norge Division of Magic Chef, Inc.*, ___ F.2d ___, ___, 125 L.R.R.M. (BNA) 2855, 2857 (7th Cir. 1987) (*en banc*). Unless this Petition is granted, conflicting decisions on the precise question presented here inevitably will continue to create confusion concerning this most critical aspect of labor-contract administration and enforcement, thereby defeating the desired national uniformity in such matters so strongly endorsed by this Court in its prior relevant decisions.

The conflict among the United States Circuit Courts of Appeal expressly acknowledged in this case by the Second Circuit in March, 1987 has since deepened. Now there exists an indisputable, acute and absolutely irreconcilable split on this question among the five circuit courts that have addressed it squarely. Finding in favor of § 301 pre-emption are the United States Courts of Appeals for the Seventh Circuit (*Lingle v. Norge Division of Magic Chef, Inc.*, ___ F.2d ___, 125 L.R.R.M. (BNA) 2855 (7th Cir. 1987) (*en banc*)) and Eighth Circuit (*Johnson v. Hussman Corp.*, 805 F.2d 795 (8th Cir. 1986)).[3] Holding against pre-emption, in

[3] Federal district courts have also held that LMRA § 301 pre-

addition to the Second Circuit in this case, are the United States Courts of Appeals for the Tenth Circuit (*Peabody Galion v. Dollar*, 666 F.2d 1309 (10th Cir. 1981)) and Third Circuit (*Herring v. Prince Macaroni of New Jersey, Inc.*, 799 F.2d 120, 124 n.2 (3d Cir. 1986)).[4]

The conflict in the circuits on the question presented[5] is highlighted by and summarized in the

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empts claims of wrongful discharge in retaliation for filing a workers' compensation claim. *See, e.g., Costello v. United Parcel Service, Inc.*, 617 F. Supp. 123 (E.D.Pa. 1984), *aff'd. mem.*, 774 F.2d 1150 (3d Cir. 1985); *Clark v. Momence Packing Co.*, 637 F. Supp. 16 (C.D. Ill. 1985), *appeal docketed*, No. 85-3165 (7th Cir. 1985).

[4] Federal district courts and state courts that have held that LMRA § 301 does not pre-empt claims of wrongful discharge in retaliation for filing a workers' compensation claim include: *Smith v. Capitol Mfg. Co.*, 626 F. Supp. 110 (S.D. Ohio 1985); *Messenger v. Volkswagen of America, Inc.*, 585 F. Supp. 565 (S.D. W.Va. 1984); *Gonzalez v. Prestress Engineering Corp.*, 115 Ill.2d 1, 503 N.E. 2d 308 (1986), *cert. denied*, 483 U.S. ___, 107 S. Ct. 3248, 97 L.Ed.2d 779 (1987); *MGM Grand Hotel-Reno v. Insley*, 728 P.2d 821 (Nev. 1986); *Yoho v. Triangle PWC, Inc.*, 336 S.E.2d 204 (W.Va. 1985).

[5] In addition to the cases addressing directly the particular species of wrongful discharge suits involved here—for discharge allegedly in retaliation for filing a workers' compensation claim—numerous reported decisions address § 301 pre-emption of other wrongful/retaliatory discharge claims, with often seemingly irreconcilable results. *See, e.g., DeSoto v. Yellow Freight Systems*, 811 F.2d 1333 (9th Cir. 1987) (§ 301 pre-empts claim of wrongful discharge in retaliation for refusing to drive truck that employee mistakenly believed was not legally registered), *amended*, 125 L.R.R.M. (BNA) 3107 (9th Cir. 1987); *Oglesby v. RCA Corp.*,752 F.2d 272 (7th Cir. 1985) (§ 301 pre-empts claim of discharge in retaliation for having asserted safety-related statutory rights and privileges); *Garibaldi v. Lucky Food Stores, Inc.*, 726 F.2d 1367

en banc decision in *Lingle* issued on June 23, 1987 by the United States Court of Appeals for the Seventh Circuit, discussing at length and expressly rejecting, 8-2, the decision reached by the Second Circuit in this case. *Lingle v. Norge Division of Magic Chef, Inc., supra. Lingle* held that the plaintiff's allegation of retaliatory discharge for filing a workers' compensation claim was a claim for breach of the collective-bargaining agreement, arose under federal law and was thus pre-empted by § 301. As the only *en banc* decision on point, *Lingle* is especially authoritative.[6]

(9th Cir. 1984) (§ 301 does not pre-empt claim of discharge in retaliation for reporting to state the employer's illegal delivery of spoiled milk), *cert. denied*, 471 U.S. 1099 (1985); *Olguin v. Inspiration Consolidated Copper Co.*, 740 F.2d 1468 (9th Cir. 1984) (§ 301 pre-empts claim for discharge in retaliation for filing safety complaints); *Harper v. San Diego Transit Corp.*, 764 F.2d 663 (9th Cir. 1985) (§ 301 pre-empts claim for wrongful discharge based on absenteeism but not a claim for wrongful discharge in violation of public policy); *Bartley v. University Asphalt Company, Inc.*, 111 Ill.2d 318, 489 N.E.2d 1367 (1986) (§ 301 pre-empts claim that union conspired in retaliatory discharge for assisting FBI); *see also, Brevik v. Kite Painting Inc.*, 404 N.W.2d 367 (Minn. 1987) (retaliatory discharge claim would be pre-empted if collective-bargaining agreement contained general "just cause" discharge provision); *Dougherty v. Parsec, Inc.*, ___ F.2d ___, 125 L.R.R.M. (BNA) 3226 (6th Cir. 1987) (§ 301 pre-empts claim of tortious interference with contract against party who allegedly induced discharge in retaliation for plaintiff's OSHA complaint).

[6] When this Court denied the petition for writ of certiorari to the Illinois Supreme Court in *Gonzalez v. Prestress Engineering Corp., supra* n.4, it apparently did not have before it the three-day-old Seventh Circuit decision in *Lingle. See Prestress Engineering Corp. v. Gonzalez*, 483 U.S. ___, 107 S.Ct. 3248, 97 L.Ed.2d 779 (White, J., dissenting and noting then-existing division of authority).

In addition to the *en banc* ruling in *Lingle*, finding pre-emption in a case indistinguishable from the case at hand, a panel of the Seventh Circuit earlier had looked to *Allis-Chalmers* in sustaining the removal and dismissal of a workers' compensation retaliatory discharge suit. In *Vantine v. Elkhart Brass Mfg. Co.*, 762 F.2d 511 (7th Cir. 1985), the court held that, for an employee covered by a "just cause" discharge provision in a collective-bargaining agreement, "an allegation of discharge in retaliation for filing a workmen's compensation claim is an allegation of a breach of the collective-bargaining agreement, [and] it arises under § 301 of the [LMRA]." *Id.* at 517. The court also noted that "the goals and policies of the Indiana Workmen's Compensation Act are protected by the collective-bargaining agreement" under the "just cause" provision. Id.[7]

Similarly, and also after considering the precedential impact of *Allis-Chalmers*, the United States Court of Appeals for the Eighth Circuit held that a state-law suit for retaliatory discharge for filing a workers' compensation claim, when brought by a unionized employee protected by a labor agreement's "just cause" standard for discharge, is pre-empted by LMRA § 301 because the plaintiff is "in fact suing the employer for wrongful discharge in violation of the collective-bargaining agreement." The court found that resolution of such a claim is substantially dependent upon

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[7] The Indiana Workmen's Compensation Act, which was at issue in *Vantine*, provided that all employment contracts were subject to its provisions and, like Conn.Gen.Stat. § 31-290, that no contract may operate to relieve the employer of any obligation under the statute. *Id.*; *see* 18a.

analysis of the terms of the labor agreement. *Johnson v. Hussman Corp.*, 805 F.2d 795, 797 (8th Cir. 1986).

In reaching its decision in this case, contrary to the decisions of the Seventh Circuit in *Lingle* and the Eighth Circuit in *Johnson*, the Second Circuit purported to align itself with the Tenth and Third Circuits.[8] In *Peabody Galion v. Dollar*, 666 F.2d 1309 (10th Cir. 1981), the court held that a retaliatory

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[8] The Second Circuit also grounded its decision in part on this Court's summary dismissal of an appeal for want of a substantial federal question in *Pan American World Airways v. Puchert*, 472 U.S. 1001 (1985), *dismissing appeal from Puchert v. Agsalud*, 67 Hawaii 225, 677 P.2d 449 (1984). *See* App. 8a - 9a. Such reliance is misplaced for several reasons.

First, the Second Circuit's notion that the Railway Labor Act (RLA) (45 U.S.C. § 151 *et seq.*) is possessed of greater pre-emptive force than LMRA § 301 was questionable when written and is now clearly incorrect in light of this Court's recent decisions emphasizing the sweeping nature of § 301 pre-emption. *See, e.g., Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. ___, 107 S.Ct. 1549, 95 L.Ed. 2d 39 (1987).

Second, the summary dismissal of an appeal from state court for want of a substantial federal question is not entitled to the same precedential weight as those written decisions of this Court rendered on the merits which are discussed at length in the text of this petition. *Edelman v. Jordan*, 415 U.S. 651 (1974).

Finally, although the issue in *Puchert* is analogous to that presented in this case, it is not the same issue. Contrary to the Second Circuit's construction, *Puchert* did not involve federal pre-emption of a claim of retaliation for filing a workers' compensation claim; it involved pre-emption of a claim based on a state right not to be discharged from employment solely because the employee suffered a compensable work injury (*compare* Conn. Gen.Stat. 31-290a with Haw.Rev.St. § 378-32(2) *quoted in Puchert*, 677 P.2d at 456 n. 2).

discharge claim brought by a unionized employee under the state workers' compensation statute was neither pre-empted by the National Labor Relations Act (NLRA) nor barred by the arbitration clause of the applicable collective-bargaining agreement. Relying upon *Peabody Galion*, the Third Circuit subsequently held that LMRA § 301 did not pre-empt a unionized employee's suit for retaliatory discharge for filing a workers' compensation claim. *Herring v. Prince Macaroni of New Jersey, Inc.*, 799 F.2d 120, 124 n.2 (3d Cir. 1986).[9]

The root of the split in authority on the question presented lies in an apparent divergence of views on applying to retaliatory discharge claims the § 301 pre-

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[9] In addition to the division of authority among the circuits and other courts, at least two circuits, including the Second, have demonstrated a degree of apparent internal conflict. For example, in an unpublished order issued less than a month before its decision in the instant matter, the Second Circuit affirmed a ruling of the United States District Court for the District of Connecticut that an attempted state-law action against this Petitioner for wrongful discharge in violation of state public policy was pre-empted by § 301 and that the grievance and arbitration procedure of the labor agreement under which Respondent was employed—which the plaintiff had used unsuccessfully—was the exclusive remedy for challenge of the discharge by the plaintiff, who was covered by the agreement. *Chasse v. United Technologies Corp.*, No. 86-7529 (2d Cir. Feb. 23, 1987), *petition for reh'g and suggestion for reh'g en banc denied* (June 12, 1987). Also, prior to its ruling in *Herring, supra*, the Third Circuit had affirmed a Pennsylvania district court's determination that, because a claim of discharge in retaliation for filing a workers' compensation claim could be resolved under the "just cause" discharge provision of the collective-bargaining agreement, a state-law tort action was pre-empted by § 301. *Costello v. United Parcel Service*, 617 F. Supp. 123 (E.D. Pa. 1984), *aff'd. mem.* 774 F.2d 1150 (3d Cir. 1985).

emption analysis utilized by this Court. In *Allis-Chalmers v. Lueck*, this Court found that § 301 pre-emption extends beyond suits expressly charging violations of labor agreements to encompass certain tort suits brought nominally under state law. To further the goal of uniformity in labor-contract interpretation, this Court stated that the pre-emption analysis

> must focus . . . on whether the [state-law tort action] as applied here confers nonnegotiable state-law rights on employers or employees independent of any right established by contract, or, instead, whether evaluation of the tort claim is inextricably intertwined with consideration of the terms of the labor contract. If the state tort law purports to define the meaning of the contract relationship, that law is pre-empted.

Allis-Chalmers, 471 U.S. at 213. The Court indicated that to permit contract terms to have different meanings under state and federal law "would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements", *id.* at 210, and also articulated as the "final reason" for pre-emption that "only that result preserves the central role of arbitration in our 'system of industrial self-government.'" *Id.* at 219, *quoting Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 581 (1960). The Court specifically identified "unfair discharge" as one of a "whole range of disputes traditionally resolved through arbitration" which should be pre-empted. *Id.* Otherwise

> [a] rule that permitted an individual to sidestep available grievance procedures, would

> cause arbitration to lose most of its effectiveness, . . . as well as eviscerate a central tenet of federal labor-contract law under § 301 that it is the arbitrator, not the court, who has the responsibility to interpret the labor contract in the first instance.

Id. at 219-220; *citing Republic Steel Corp. v. Maddox*, 379 U.S. 650 (1965). Having articulated these lines of analysis, the Court cautioned that "[t]he full scope of the pre-emptive effect of federal labor-contract law remains to be fleshed out on a case-by-case basis." Id. at 220.

Applying *Allis-Chalmers*, the Seventh Circuit in *Lingle* reasoned that pre-emption by § 301 is required because a retaliatory or wrongful discharge claim "implicates the same analysis of the facts as would an inquiry under the just cause provisions of the agreements," *Lingle*, 125 L.R.R.M. (BNA) at 2857, and it therefore follows that "where a plaintiff makes a claim for wrongful discharge, this claim necessarily implicates a just cause provision." *Id.* at 2870. Under the rationale of the Second Circuit in this case, on the other hand, § 301 does not require pre-emption under *Allis-Chalmers* because, under the court's assumption as to what proof state law requires, Petitioner

> would have to satisfy the trier of fact in the state court only that it fired [Respondent] for a reason unrelated to filing a workers' compensation claim. Though it would have to show that the reason was more than a pretext, it would not have to establish that the ground for [Respondent's] termination

> amounted to "just cause" under the labor agreement. (App. 6a).

The Seventh Circuit expressly rejected this reasoning, stating that "if a decision on the plaintiff's claim could be decided under the just cause provision of the collective-bargaining agreement, then it is immaterial that the plaintiff's claim could also be decided with reference to the state statute." *Lingle*, 125 L.R.R.M. (BNA) at 2867, 2869.

It is clear that, unlike the Second Circuit in this case, the Seventh Circuit in *Lingle* saw in LMRA § 301 pre-emption a uniquely powerful tool for uniformity in federal labor law, which, as this Court has observed, is both distinct from and broader than pre-emption doctrines under other federal labor law statutes. *Lingle*, 125 L.R.R.M. (BNA) at 2864; *see Allis-Chalmers*, 471 U.S. at 213 n.9. Correctly noting that "[t]he Second Circuit's analysis fails to take into account the fact that Congress can pre-empt a state statute," 125 L.R.R.M. (BNA) at 2869, the *Lingle* court found that § 301 requires that the right of direct suit under state law for retaliatory discharge give way to federal law, where plaintiffs' claims are in reality for breaches of the just cause discharge provision of the collective-bargaining agreement. *Id.* at 2864.

Because of the silence of Congress on the issue, definitive law concerning LMRA § 301 pre-emption arises solely from this Court's exercise of its supervisory function over the lower federal courts in this area, where national uniformity is the core value. The effect of pre-emption by § 301 upon the discrete category of state-law claim at issue here—the right of direct suit under state law for retaliatory discharge—needs to be addressed clearly, as is evidenced by the

sheer number of decisions emanating from many courts, state and federal, throughout the country which apply the *Allis-Chalmers* pre-emption analysis in different, often conflicting fashion. Although only the result reached by the *Lingle* court gives proper recognition to the pre-emptive force of § 301 and preserves the full efficacy of the arbitral mechanism, it is plain that the circuit courts are diametrically at odds on the issue presented by this case. In view of the important and recurring nature of the issue, this Petition should be granted.

II. WHERE AN EMPLOYEE IS PROTECTED AGAINST UNJUST DISCHARGE BY A COLLECTIVE-BARGAINING AGREEMENT, A RIGHT OF DIRECT SUIT UNDER STATE LAW MUST BE PRE-EMPTED BY § 301

The facts in the instant case support pre-emption by § 301 far more strongly than those in *Allis-Chalmers*. Here the prohibition against retaliatory discharge, the subject matter of the state tort, is contained in the labor agreement itself and such prohibition can properly be said to be essentially coextensive with the state law. In *Allis-Chalmers*, in contrast, the presence under the labor contract of a right and remedy for bad faith handling of an insurance claim was far less clear and largely dependent upon implication and inference. Under the circumstances of this case, the protection afforded by the state law is already provided in the labor agreement. The state-law suit is thus the functional equivalent of an action for breach of the labor contract and therefore must be pre-empted by § 301.

Pre-emption by LMRA § 301 of the right of direct suit provided by state wrongful discharge law in cases

such as this does not nullify the state legislative or judicial declaration that a certain category of discharge is unjust. Indeed, reference to state law as an aid to labor contract interpretation is common and accepted. *See Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 596 (1960). Moreover, a labor contract that purported to allow discharge for filing a workers' compensation claim in violation of state law would be unenforceable. Conn.Gen.Stat. § 31-290 (App. 18a); *see Vantine v. Elkhart Brass, supra*, 762 F.2d at 517. Pre-emption by § 301 simply recognizes that, for an employee protected by a "just cause" discharge provision in a collective-bargaining agreement, the purported state-law right not to be discharged for a particular reason has been "federalized" by § 301, i.e., "any civil complaint raising this select group of claims is necessarily federal in character." *Metropolitan Life Insurance Co. v. Taylor, 481 U.S. ___, ___, 107 S.Ct. 1542, 1546, 95 L.Ed.2d 55 (1987).*

Further, and as stated by this Court in the seminal case of *Textile Workers v. Lincoln Mills*, 353 U.S. 448 (1957), state law which is compatible with § 301 can be applied to labor-contract disputes and, when so applied, "will be absorbed as federal law and will not be an independent source of private rights." *Id.* at 457. Indeed, according to the Seventh Circuit, a state-law provision prohibiting contractual modification of the anti-retaliation prohibition—which the Court of Appeals here saw as "specifically prohibit[ing] . . . reference" to the labor agreement (App. 6a)—would become, in effect, an implied term of the labor contract. The result is that "the termination of an employee for filing a workmen's compensation claim would not be considered for 'just cause,'" and

therefore that the "goals and policies of the [state] Workmen's Compensation Act are protected by the collective-bargaining agreement." *Vantine*, 762 F.2d at 517; *see Cox v. United Technologies, Essex Group Inc.*, 727 P.2d 56 (Kan. 1986) (cause of action for retaliatory discharge for filing workers' compensation claim is not extended to unionized employees, who are adequately protected).

In contrast to this Court's opinion in *Allis-Chalmers* and that of the Seventh Circuit in *Lingle*, however, not a word of the Second Circuit's decision in this case addresses the possible scope of, or protections afforded by, the collective-bargaining agreement. Instead, the Second Circuit, starting from the wrong place, first categorized Respondent's claim as a matter of *state* law and then equated the cause of action at issue with so-called state "mandated-benefits" laws that this Court, in an altogether different context, has ruled not pre-empted. App. 6a, 9a-10a, *citing Metropolitan Life Insurance Company v. Commonwealth of Massachusetts*, 471 U.S. 724 (1985). LMRA § 301 appears to *require* consideration of the possibility that the labor agreement, in addition to the state law, covers the challenged conduct, thereby providing a cause of action for the covered employee and pre-empting the state-law action. To hold otherwise would put the state interest before the federal and stand on end the pre-emptive intent expressed by Congress in § 301.

Thus, in *Lingle*, the Seventh Circuit labeled as "inverted" the plaintiff's argument that "the definition of retaliatory discharge [under state law] does not expressly require an interpretation of a collective-bargaining agreement," stating instead that "the scope

of the contract . . . must be analyzed initially" because "the just cause provision . . . may well prohibit such retaliatory discharge." *Lingle*, 125 L.R.R.M. (BNA) at 2867. Similarly, in *Allis-Chalmers*, this Court rejected the premise, upon which the state court had based its finding of no pre-emption, that the substantive relief sought was not explicitly addressed by and therefore "outside" the labor agreement, stating: "[t]here is no reason to assume that the labor contract as interpreted by the arbitrator would not provide such relief." 471 U.S. at 215. With respect to the grievance machinery itself, this Court earlier had observed that

> it cannot be said, in the normal situation, that contract grievance procedures are inadequate to protect the interests of an aggrieved employee until the employee has attempted to implement the procedures and found them so.

Republic Steel Corp. v. Maddox, supra, 379 U.S. at 653.

In this case, then, there is every reason to suppose that the labor agreement would in fact provide relief for retaliatory discharge which is also in violation of state law. As a labor contract's "just cause" discharge provision by its very nature provides a substantive prohibition coextensive with the state law's anti-retaliation provision, the right of direct suit for a covered employee must be pre-empted.

III. ONLY A RULE THAT CHANNELS WRONGFUL DISCHARGE CLAIMS THROUGH APPROPRIATE AND AVAILABLE COLLECTIVE-BARGAINING AGREEMENT PROCEDURES SATISFIES THE CORE NATIONAL LABOR POLICIES ESPOUSED BY CONGRESS AND RECOGNIZED BY THIS COURT

As applied to the unionized employee covered by a collective-bargaining agreement, state-law wrongful discharge claims are somewhat unusual in that the alleged wrong is arguably remediable under either the labor agreement or state law. In this context, the aspect of federal labor-contract pre-emption that seeks to preserve the grievance and arbitration *framework* fundamental to collective bargaining assumes special significance.

Provisions in a labor agreement restricting the employer's right to discharge except for "just cause" are integral to the job-security for labor-peace exchange indispensable to collective bargaining. Those provisions are usually, as here, made enforceable through a grievance and arbitration procedure, which this Court has declared to be part and parcel of the federal remedy provided by § 301. *Republic Steel Corp. v. Maddox*, 379 U.S. 650 (1963). In that way, the employer and its employees erect collectively, with respect to job-security, what this Court has called "a system of industrial self-government" with the grievance machinery "at the very heart of the system." *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 580-81 (1960). Labor arbitrators, selected by the parties to adjudicate, among other things, the fairness of discharges, have been recognized by this Court as "indispensable agencies in a continuous col-

lective-bargaining process." *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 596 (1960).

One of the principal reasons for holding pre-empted the state-law claim at issue in *Allis-Chalmers* was that "[a]ny other result would elevate form over substance and allow parties to evade the requirements of § 301," including "the presumption that parties are not free to avoid the contract's arbitration procedures." *Allis-Chalmers*, 471 U.S. at 211, 204 n. 1. That aspect of *Allis-Chalmers* is central to the present case and many others like it. The split in the circuits on the question presented herein requires a clear pronouncement from this Court on the pre-emptive effect of LMRA § 301 on a state-law remedial provision giving an avenue of relief—a direct right of suit without prior resort to the available grievance/arbitration remedies—not available under federal law. This Court has already ruled on a similar question under the Railway Labor Act, reaching a result seemingly at odds with the decision of the Second Circuit in this case. *Andrews v. Louisville & Nashville R.R.*, 406 U.S. 320 (1972). It has also recently said that "the pre-emptive force of § 301 is so powerful as to displace entirely any state cause of action" within its scope, *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 23 (1983), "*even when the state action purport[s] to authorize a remedy unavailable under the federal provision.*" *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. ___, ___, 107 S.Ct. 1549, 1557, 95 L.Ed.2d 39 (1987) (emphasis supplied); *see also, Perry v. Thomas*, 482 U.S. ___, 107 S.Ct. 2520, 96 L.Ed.2d. 426 (1987) (in Federal Arbitration Act, 9 U.S.C. § 2, "Congress declared a national policy favoring arbitration agreements and withdrew the power of the

states to require a judicial forum for the resolution of [arbitrable] claims.")

The important distinction between the substantive right to file a workers' compensation claim without retaliation—which right pre-emption leaves intact—and the procedural right of direct suit was recognized in an Illinois federal district court case cited with approval in *Lingle*, 125 L.R.R.M. (BNA) at 2866. *See Clark v. Momence Packing Co.*, 637 F. Supp. 16, 18 (C.D. Ill. 1985), *appeal docketed*, No. 85-3165 (7th Cir. 1985). On the authority of this Court's holding in *Republic Steel Corp. v. Maddox*, *supra*, the court there held that as a matter of federal law a unionized employee must pursue a purported state-law right to be free of retaliatory discharge first through the grievance procedure created by the labor contract. The split that has developed in the circuits over pre-emption of retaliatory discharge claims, however, calls into doubt the effectiveness of § 301 in displacing state-provided remedies which end-run those provided in labor agreements and the validity of fundamental principles firmly rooted in this Court's § 301 precedents.

Unionized employers have a legitimate interest in "limiting the choice of remedies available to aggrieved employees." *Republic Steel Corp. v. Maddox*, 379 U.S. at 653. Unionized employees have a parallel interest in maintaining the exclusivity of contractual wrongful discharge procedures. It is only through such exclusivity that the prestige and active participation in day-to-day labor relations of their union can be preserved. *Id.* This important consideration was given weight by the Seventh Circuit in *Lingle* but ignored by the Court

of Appeals here. Moreover, it is only through judicial insistence on resort to available contract remedies, emphatically endorsed in *Maddox, supra*, that these interests are harmonized and the federal policy behind them is adequately protected. As held by this Court in *Andrews*, "the notion that the grievance and arbitration procedures . . . are optional, to be availed of as the employee . . . chooses, was never good history and is no[t] . . . good law." *Andrews v. Louisville & Nashville R.R.*, 406 U.S. at 323.

The reason given by this Court in *Allis-Chalmers* for extension of § 301 pre-emption beyond the express breach of contract action was that "the policies that animate § 301 are to be given their proper range." *Allis-Chalmers*, 471 U.S. at 211. Foremost among those policies is the doctrine of judicial restraint, established in the *Steelworkers Trilogy* on the issue of arbitrability of employer/employee disputes. For the very reason that a labor agreement does not and cannot cover every contingency and claim by its explicit terms, this Court stated that

> [it] is not unqualifiedly true . . . that an employee's claim must fail unless he can point to a specific contract provision upon which the claim is founded . . . In the absence of any express provision excluding a particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail.

Steelworkers v. Warrior & Gulf Navigation Co., supra at 577, 584-85. Doubts must be resolved in favor of arbitration. *Id.* at 582-83. This doctrine must be woven into the fabric of § 301 pre-emption so that the same

restraint and respect for the arbitral process is shown in assessing whether a retaliatory discharge claim is covered by the collective-bargaining agreement and thus a creature of federal law, pre-empted by § 301.

By cutting out the labor arbitrator completely from the picture, the Court of Appeals ignores other interests served by the grievance and arbitration process which this Court has recognized are embodied in § 301 and thus fails to give to that process the "full play" this Court has said that Congress intended. *Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 566 (1960). For example, for both the discharged employee and the employer, the very processing of a wrongful discharge claim through the grievance procedure "may have therapeutic values of which those who are not a part of the plant environment may be quite unaware." *Id.* at 568. That procedure is a substitute not simply for litigation but also, more fundamentally, for industrial strife. *Steelworkers v. Warrior & Gulf Navigation Co., supra*, 363 U.S. at 578, 585. The grievance/arbitration procedure provides a salutary opportunity to settle disputes without the animosities, expense and publicity that attend litigation and can, unlike litigation, "provide for their solution in a way which will generally accord with the variant needs and desires of the parties." *Id.* at 581. That solution has ramifications beyond the single employer/employee relationship at hand which inevitably will influence "future relations between the employer and other employees." *Republic Steel Corp. v. Maddox, supra*, 379 U.S. at 656. All these considerations militate in favor of a finding of pre-emption here and against the result reached by the Second Circuit in the proceeding below.

CONCLUSION

For the reasons stated, Petitioner respectfully prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

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August 24, 1987

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS

For the Second Circuit

No. 766 August Term 1986

Argued: February 11, 1987 Decided: March 17, 1987

Docket No. 86-7948

_____ X

CHRISTINE BALDRACCHI,

Appellant,

v.

PRATT & WHITNEY AIRCRAFT DIVISION,
UNITED TECHNOLOGIES CORPORATION,

Appellee.

_____ X

Before: FEINBERG, Chief Judge, LUMBARD and MINER, Circuit Judges.

Appeal from order of the United States District Court for the District of Connecticut, Alan H. Nevas, J., denying motion to remand and dismissing wrongful discharge complaint because the state claim was preempted by section 301 of the Labor Management Relations Act.

Reversed and remanded with instructions to remand to the state court.

FEINBERG, Chief Judge:

This case presents the important question whether section 301 of the Labor Management Relations Act (LMRA),

29 U.S.C. § 185, which gives federal courts jurisdiction over suits alleging violations of collective bargaining agreements, preempts an action by a union member under a state statute that prohibits the discharge of an employee for filing a workers' compensation claim. The discharged employee, Christine Baldracchi, appeals from an order of the United States District Court for the District of Connecticut, Alan H. Nevas, J., denying her motion to remand to the state court and granting defendant's motion to dismiss the complaint. Because we believe that Baldracchi's action is not preempted by section 301 of the LMRA, we reverse and remand with instructions to remand to the state court.

I. Background

The facts relevant to this appeal are uncomplicated. Baldracchi filed suit in the Superior Court of the State of Connecticut claiming that she had been wrongfully discharged by Pratt & Whitney Aircraft Division of United Technologies Corporation (Pratt & Whitney) for filing a workers' compensation claim. Prior to her discharge, Baldracchi was employed by Pratt & Whitney under the terms of a collective bargaining agreement between Pratt & Whitney and Lodge 1746, International Association of Machinists and Aerospace Workers. Her complaint alleged that by firing her, Pratt & Whitney had violated Conn. Gen. Stat. § 31-290a, which prohibits employers subject to the statute from discharging an employee for filing a claim for workers' compensation benefits and provides civil remedies for violation of the statute.[1]

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[1] The Statute provides:

(a) No employer who is subject to the provisions of [Connecticut workers' compensation law] shall discharge, or cause to be discharged, or in any manner discriminate against any employee because the employee has filed a claim for workers' compensation benefits or otherwise exercised the rights afforded to him pursuant to the provisions of this

Pratt & Whitney removed the action to the United States District Court arguing that, since Baldracchi was covered by a collective bargaining agreement while she worked for Pratt & Whitney, her wrongful discharge suit must be construed as claiming a violation of that agreement. Therefore, Pratt & Whitney contended, her action presents a federal question arising under section 301 of the LMRA. In the district court, Baldracchi mo' d to remand the case for lack of subject matter jurisdiction, while Pratt & Whitney moved to dismiss the complaint for failure to state a claim upon which relief can be granted. The district court, holding that "plaintiff's cause of action has been preempted by federal law," denied the motion to remand and granted the motion to dismiss the complaint.

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chapter.

(b) Any employee who is so discharged or discriminated against may either: (1) Bring a civil action in the superior court for the judicial district where the employer has its principal office for the reinstatement of his previous job, payment of back wages and reestablishment of employee benefits to which he would have otherwise been entitled if he had not been discriminated against or discharged and any other damages caused by such discrimination or discharge. The court may also award punitive damages. Any employee who prevails in such a civil action shall be awarded reasonable attorney's fees and costs to be taxed by the court; or (2) file a complaint with the chairman of the workers' compensation commission alleging violation of the provisions of subsection (a) of this section. Upon receipt of any such complaint, the chairman shall select a commissioner to hear the complaint, provided any commissioner who has previously rendered any decision concerning the claim shall be excluded. The hearing shall be held in the workers' compensation district where the employer has its principal office. After the hearing, the commissioner shall send each party a written copy of his decision. The Commissioner may award the employee the reinstatement of his previous job, payment of back wages and reestablishment of employee benefits to which he otherwise would have been eligible if he had not been discriminated against or discharged. Any employee who prevails in such a complaint shall be awarded reasonable attorney's fees. Any party aggrieved by the decision of the commissioner may appeal the decision to the appellate court.

II. Discussion

The resolution of this appeal turns on the question whether section 301 of the LMRA preempts Baldracchi's claim under the Connecticut statute. If it does, the district court acted correctly in denying the motion to remand and applying federal law; dismissal for failure to state a claim upon which relief could be granted was also proper because, under federal law, Baldracchi would first have to utilize the grievance procedure provided in the collective bargaining agreement. Conversely, if section 301 does not preempt her claim under the Connecticut statute, Baldracchi has a right to pursue it in state court, and the district court should have remanded the suit.

Congress' authority to preempt state law derives from the Supremacy Clause of the Constitution. See Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 210-11 (1824). Since Congress has not exercised its authority to occupy the entire field of labor law,"the question whether a certain state action is pre-empted by federal law is one of congressional intent." Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 208 (1985). The issue thus becomes whether Congress intended to preempt state statutes that protect workers' compensation actions when it enacted Section 301 of the LMRA.

Section 301 provides subject matter jurisdiction to the federal courts for suits involving violations of collective bargaining agreements.[2] In cases where section 301 is the basis of jurisdiction, it also requires that courts apply federal common law to determine the meaning of the agree-

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[2] Section 301 of the LMRA provides in relevant part:

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

ment. Teamsters v. Lucas Flour Co., 369 U.S. 95, 103-04 (1962). Thus, the Supreme Court has held that section 301 preempts a state claim when "resolution of a state-law claim is substantially dependent upon analysis of the terms of [a collective bargaining] agreement." Allis-Chalmers, 471 U.S. at 220. Pratt & Whitney argues that section 301 preemption is mandated here because adjudication of the state claim will require reference to the collective bargaining agreement. In pressing this fundamental contention in a number of ways, Pratt & Whitney relies principally on Allis-Chalmers v. Lueck, 471 U.S. 202.

In *Allis-Chalmers*, the Court held that plaintiff's suit alleging a state law tort of bad-faith handling of an insurance claim by an employer was preempted by section 301. Plaintiff, an employee of Allis-Chalmers, was covered by a collective bargaining agreement that provided for payment of insurance benefits for non-occupational injuries. Plaintiff suffered a non-occupational injury and sued Allis-Chalmers for bad-faith handling of his insurance claim. Although he did receive benefits, plaintiff contended that Allis-Chalmers had acted in bad faith by periodically ordering the insurance company to cut off its payments to him.

The Court concluded that plaintiff's claim was dependent upon the terms of the collective bargaining agreement. It pointed out that interpretation of the labor agreement would determine "whether there was an obligation...to provide the payments in a timely manner," and thus whether Allis-Chalmers' action in suspending those payments constituted bad faith. The Court pointed out further that "if the arbitrator ruled that the labor agreement did *not* provide [relief for improper payment of benefits], that too should end the dispute, for under Wisconsin law there is nothing that suggests that it is not within the power of the parties to determine what would constitute 'reasonable' performance of their obligations under an insurance contract." 471 U.S. at 215-16. Thus, the insurance tort in

Allis-Chalmers "not only derive[d] from the contract, but [was] defined by the contractual obligation of good faith." 471 U.S. at 218. This dependence of the state claim on the labor agreement mandated preemption under section 301.

In contrast to the tort in *Allis-Chalmers*, Baldracchi's suit is independent of the collective bargaining agreement. Her claim of retaliation for filing a workers' compensation claim does not turn on interpretation of that agreement. At trial, Baldracchi would have to present a prima facie case that she was in fact fired for filing a workers' compensation claim. See 2A A.Larson, The Law Of Workmen's Compensation § 68.36(c) (1986). In its defense, Pratt & Whitney would have to demonstrate that Baldracchi was fired for another, non-pretextual reason.

Pratt & Whitney urges, however, that determining whether its proffered reason for filing Baldracchi was "legitimate," i.e., for "just cause" under the labor agreement, would require interpretation of that agreement. Thus, it argues, once Baldracchi makes out a prima facie case, reference to the labor contract is necessary. We do not agree. Pratt & Whitney's liability for retaliatory discharge under the statute is not decided by reference to the labor contract. Indeed, the Connecticut statute specifically prohibits such reference. See Conn. Gen. Stat. § 31-290.[3] Pratt & Whitney would have to satisfy the trier of fact in the state court only that it fired Baldracchi for a reason unrelated to her filing a workers' compensation claim. Though it would have to show that the reason was more than a pretext, it would not have to establish that the grounds for Baldracchi's termination amounted to "just cause" under the collective bargaining agreement.

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[3] The statute provides:

No contract, expressed or implied, no rule, regulation or other device shall in any manner relieve any employer, in whole or in part, of any obligation created by this chapter, except as herein set forth.

Moreover, the rights provided by section 31-290a cannot be bargained away. See note 3, supra. Unlike the tort in *Allis-Chalmers*, where the claim of the employee was "rooted" in the agreement between the parties, 471 U.S. at 220, the right under the Connecticut statute is absolute and cannot be waived. Compare id. at 213. In *Allis-Chalmers*, the Court noted that "[c]learly, § 301 does not grant the parties to a collective-bargaining agreement the ability to contract for what is illegal under state law." 471 U.S. at 212. We take this to mean that even if the labor agreement provided that Pratt & Whitney could discharge an employee who filed a workers' compensation claim, the provision would have no effect on Baldracchi's claim under the Connecticut statute. Thus, it is difficult to see how determination of that claim can be said to depend on the collective bargaining agreement. Cf. Alexander v. Gardner-Denver Co., 415 U.S. 36, 51-52 (1974) (distinguishing rights subject to collective bargaining from anti-discrimination rights in holding that the latter cannot be waived by a collective bargaining agreement.)

It is true that determining what relief Baldracchi would be entitled to if she prevailed in the state courts might involve examination of the labor contract. For example, determination of damages might require establishing Baldracchi's rate of pay and other economic benefits under the labor contract However, not every question "tangentially involving a provision of a collective-bargaining agreement[] is pre-empted by § 301." Allis-Chalmers, 471 US. at 211. Determination of the extent of damages is not the sort of "substantial dependence" on the labor agreement that mandates section 301 preemption.

Pratt & Whitney also argues that a procedure for redressing Baldracchi's retaliatory discharge claim is fully provided for in the portion of the collective bargaining agreement dealing with remedies for discharge without "just cause." This argument is based on a concern with the "need to preserve the effectiveness of arbitration."

Allis-Chalmers, 471 U.S. at 219. In *Allis-Chalmers*, the Court pointed out that nearly any claim under a collective bargaining agreement could easily be restated as a tort claim for breach of a good-faith obligation under a contract. If this simple recasting of the claim sufficed to avoid section 301 preemption, the "federal right to decide who is to resolve contract disputes will be lost," id., since the tort action would not be subject to mandatory arbitration. However, such manipulation is not a concern in this case because, as demonstrated above, Baldracchi's claim is not derivative from the collective bargaining agreement.

There are other grounds for believing that Congress did not intend preemption here. Our holding that a claim under the Connecticut statute is not preempted buy section 301 is strongly supported by the Supreme Court's decision, after *Allis-Chalmers*, in Pan American World Airways v. Puchert, 472 US. 1001 (1985). Puchert was an appeal from a decision of the Supreme Court of Hawaii, Puchert v. Agsalud, 677 P.2d 449 (Haw. 1984), holding that a state prohibition of discharge in retaliation for filing a workers' compensation claim was not preempted by the Railway labor Act (RLA), 45 U.S.C. § 151 et seq., see 677 P.2d at 454-56. The United States Supreme Court dismissed the appeal for want of a substantial federal question. If the Hawaii law were preempted by the RLA, the case would necessarily have presented the Court with a substantial federal question.

Courts have used general federal labor law preemption standards to determine whether the RLA preempts state law. E.g., Beers v Southern Pac. Transp. Co., 703 F.2d 425, 428-29 (9th Cir. 1983); Puchert v. Agsalud, 677 P.2d at 455-56. Thus, given that Congress did not intend the RLA to preempt statutes like section 31-290a, it seems unlikely that a different approach would be taken with the LMRA. Indeed, if anything, the more compulsory arbitration provisions of the RLA, 45 U.S.C. § 153 First, would suggest a greater congressional intent to preempt state

law under the RLA than under federal labor law. Cf. Jackson v. Consolidated Rail Corp., 717 F.2d 1045, 1052 (7th Cir. 1983), cert. denied, 465 U.S. 1007 (1984) (state claim more likely to impinge on exclusive administrative jurisdiction under the RLA than under the National Labor Relations Act). The Supreme Court's decision in *Puchert* thus suggests that section 31-290a is not preempted by federal law.

Further evidence of congressional intent not to preempt may be found in 28 U.S.C. § 1445(c), which prohibits the removal of workers' compensation actions to federal court.[4] Admittedly, enactment of that statute was largely motivated by a commendable desire of Congress to limit the diversity jurisdiction of the federal courts. Congress was also concerned, however, that removal of workers' compensation cases would require application of federal procedural rules that could work to the detriment of the injured worker. See S. Rep. No. 1830, 85th Cong., 2d Sess. 9, reprinted in 1958 U.S. Code Cong. & Admin. News 3099, 3106. Thus, section 1445(c) reveals a congressional intent not to interfere with state protection of workers' compensation rights.

Finally, it should be noted that the position urged by Pratt & Whitney would have the effect of granting less state law protection to employees governed by collective bargaining agreements than to other employees. While a non-union Connecticut worker's right to file a workers' compensation claim would remain protected by section 31-290a, union members like Baldracchi would be protected only by their collective bargaining agreements. In an analogous circumstance, the Supreme Court stated, "It would

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[4] Section 1445(c) provides:

A civil action in any State court arising under the workmen's compensation laws of such State may not be removed to any district court of the United States.

turn the policy that animated the Wagner Act on its head to understand it to have penalized workers who have chosen to join a union by preventing them from benefiting from state labor regulations imposing minimal standards on nonunion employers." Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 756 (1985).

In deciding that Baldracchi's wrongful discharge claim is not preempted by section 301, we are aware that other circuit courts have reached varying conclusions on this issue. Compare Herring v. Prince Macaroni of New Jersey, Inc. 799 F.2d 120, 124n.2 (3d Cir. 1986) (no preemption) and Peabody Galion v. Dollar, 666 F.2d 1309, 1316-19 (10th Cir. 1981) (no preemption, pre-*Allis-Chalmers*) with Johnson v. Hussmann Corp., 805 F.2d 795, 797 (8thCir. 1986) (preemption) and Vantine v. Elkhart Brass Mfg. Co., 762 F.2d 511, 516-18 (7th Cir. 1985) (preemption). See also, Garibaldi v. Lucky Food Stores, Inc., 726 F.2d 1367, 1371-76 (9th Cir. 1984), cert. denied, 471 U.S. 1099 (1985) (no preemption of "whistle blower" wrongful discharge statute by section 301.) In our view, however, the sounder result is reached in cases holding that statutes like section 31-290a provide rights independent of collective bargaining agreements and are not preempted by section 301 of the LMRA.

We conclude that Baldracchi's claim is not preempted by section 301 of the LMRA. Accordingly, we reverse and remand the case to the district court with instructions to remand to the state court.

APPENDIX B

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CHRISTINE BALDRACCHI	)	
	)	
v.	)	
	)	Civil No. H-86-615(AHN)
PRATT & WHITNEY AIRCRAFT, DIVISION OF UNITED TECHNOLOGIES, CORP.	)	Entered September 30, 1986

RULING ON MOTION FOR REMAND AND ON MOTION TO DISMISS

The plaintiff brought this action in the Connecticut Superior Court alleging wrongful discharge in violation of Conn. Gen. Stat. Section 31-290a[1] for filing a workers' compensation claim. The defendant removed the action pursuant to 28 U.S.C. Section 1441 on the grounds that the plaintiff's complaint must be construed as one for violating a collective bargaining agreement and as such is one arising under Section 301 of the Labor Management Relations Act (LMRA), 29 U.S.C. Section 185. In addition, the defendant has moved to dismiss the action on the grounds that it fails to state a claim upon which relief can be granted. The plaintiff has moved to remand claiming that this court lacks jurisdiction since the action is grounded upon a state statute which provides a private right of action to an employee and is not a suit for violation of a collective bargaining agreement.

---

[1] Conn. Gen. Stat. Section 31-290a provides in part: (a) No employer who is subject to the provisions of this chapter shall discharge, or cause to be discharged, or in any manner discriminate against any employee because the employee has filed a claim for workers' compensation benefits or otherwise exercised the rights afforded to him pursuant to the provisions of this chapter.

It is well settled that where, as in this case, there is no diversity of citizenship between the parties, the propriety of removal depends on whether the action falls within the original "federal question" jurisdiction under 28 U.S.C. Section 1331. Under the well-pleaded complaint rule, a defendant may not remove a case to federal court unless the plaintiff's complaint establishes that the action "arises under" federal law. *See Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667 (1950); *Gully v. First National Bank in Meridan*; 299 U.S. 109 (1936).

A case is generally not removable where the federal jurisdiction appears in the defendant's answer or in the removal petition. However, it is an independent corollary to the well-pleaded complaint rule that a plaintiff cannot defeat the defendant's right to remove by artfully disguising an essentially federal law claim in terms of state law. *Franchise Tax Board v. Construction Laborers Trust for Southern California*, 463 U.S. 1, 22 (1983); *Oglesby v. RCA Corp.*, 752 F.2d 272, 275 (7th Cir.1985). In such cases, it is proper for the court to examine the record to determine if the real nature of the claim is federal. *Olgesby v. RCA Corp.*, 752 F.2d at 278; *In re Wiring Device Antitrust Litigation*, 498 F. Supp. 79, 82 (E.D.N.Y. 1980).

Where, as here, the removal petition indicates that the plaintiff is a union member covered by a collective bargaining agreement, removal would be proper if it were determined that the action arose under Section 301 of the LMRA which preempts state law. *Franchise Tax Board v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. at 24 (*quoting Avco Corp. v. Aero Lodge No. 735 International Association of Machinists and Aerospace Workers*, 376 F.2d 337, 340 (6th Cir. 1967), *aff'd*, 390 U.S. 557 (1968)). Thus, if the asserted preemption exists, then the plaintiff's claim, although pleaded under state law, is one arising under federal law and the case may be removed under 28 U.S.C. Section 1441. *Simsbury Bank and Trust Co. v. The Connecticut Bank and Trust*

Co., N.A., No. H-85-454(MJB), slip op. at 7 (D. Conn. April 8, 1986). *See* 14A Wright, Miller & Cooper, *Federal Practice and Procedure: Jurisdiction 2d* Section 3722.

Since the recent United States Supreme Court decision in *Allis-Chambers Corp. v. Lueck*, 105 S. Ct. 1904 (1985), courts which have addressed the issue have held that an action brought by a union employee under state law alleging wrongful discharge for filing a workers' compensation claim is really an action for breach of a collective bargaining agreement and is preempted by Section 301. *See Vantine v. Elkhart Brass Manufacturing Co., Inc.*, 762 F.2d 511, 517 (7th Cir. 1985); *Denault v. Emhart Machinery Corp.*, No. H-85-619(AHN), slip op. at 6 (D. Conn. May 19, 1986).

Accordingly, as the plaintiff's cause of action has been preempted by federal law, this action is properly removable under Section 28 U.S.C. Section 1441.

With respect to the defendant's Motion to Dismiss, because the court finds that the plaintiff's action for wrongful discharge has been preempted by Section 301 of the LMRA, the complaint necessarily fails to state a claim upon which relief can be granted and the action must be dismissed.

The plaintiff's employment relationship with the defendant was governed by a collective bargaining agreement between the plaintiff and her union. The agreement contained a grievance procedure as the exclusive method for challenging an alleged wrongful discharge.

Prior to the *Allis-Chalmers* decision there was authority for the plaintiff's position that her action for retaliatory discharge for filing a workers' compensation claim was not preempted by federal labor law. However, in *Allis-Chalmers*, the Court noted that "[i]f the policies that animate Section 301 are to be given their proper range . . . the pre-emptive effect of Section 301 must extend beyond suits

alleging contract violation," *Allis-Chalmers Corp. v. Lueck*, 471 U.S. at ___, 105 S. Ct. at 1911, and held that, in order to preserve the central role of arbitration in our system of industrial self-government, Congress intended Section 301 to preempt tort claims that were derived from and inextricably intertwined with the employment relationship. The Court concluded that a contrary holding would allow an employee to by-pass the grievance and arbitration process causing it to lose most of its effectiveness. 471 U.S. at ___, 105 S. Ct. at 1915-16.

Following *Allis-Chalmers* it has generally been held that the allegation of retaliatory discharge for filing a workers' compensation claim is an allegation of breach of a collective bargaining agreement and an action brought by a union employee under state law for wrongful discharge is preempted by Section 301. *Vantine v. Elkhart Brass Manufacturing Co., Inc.*, 762 F.2d 511, 517 (7th Cir. 1985); *Chasse v. United Technologies Corp.*, No. H-84-48 (D. Conn. May 27, 1986)(Clarie, J.); *Denault v. Emhart Machinery Group*, No. 85-619(AHN)(D. Conn. May 19, 1986); *Lingle v. Norge Division of Magic Chef*, Inc., 618 F. Supp. 1448, 1449 (S.D. Ill. 1985); *Johnson v. Hussman Corp.*, 610 F. Supp. 757 (E.D. Mo. 1985); *Daugherty v. Lucky Stores*, 120 LRRM 3417 (C.D. Ill. 1985).

In this action the issue is whether the plaintiff was properly discharged from employment. Her employment was governed by a collective bargaining agreement between her union and the defendant. It contained a grievance and arbitration procedure which provided the exclusive method by which an employee could challenge the propriety of the decision to terminate her employment. The plaintiff's claim of retaliatory discharge is really a claim for breach of her collective bargaining agreement. Thus, as the state tort claim is inextricably intertwined with, related to and affects her employment relationship, it is preempted by Section 301. To allow an employee to bypass the grievance and arbitration procedure by filing

a state law action for retaliatory discharge would cause the arbitration process to lose most of its effectiveness. The plaintiff has accordingly failed to state a claim upon which relief can be granted and the action must be dismissed.

For the foregoing reasons, the plaintiff's Motion for Remand is denied and the defendant's Motion to Dismiss is granted.

SO ORDERED this 30th day of September, 1986, at Hartford, Connecticut.

/s/ Alan H. Nevas
United States District Judge

APPENDIX C

ORDER DENYING REHEARING

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 28th day of May one thousand nine hundred and eighty-seven.

CHRISTINE BALDRACCHI	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	
	)	Docket No. 86-7948
PRATT & WHITNEY	)	
AIRCRAFT DIVISION,	)	
UNITED TECHNOLOGIES CORPORATION,	)	
	)	
Defendant-Appellee.	)	
	)	

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by counsel for the Appellee PRATT & WHITNEY AIRCRAFT DIVISION, UNITED TECHNOLOGIES CORPORATION.

Upon consideration by the panel that heard the appeal, it is

Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for hearing in banc has been transmitted to the judges of the court in regular active service and to any other judge that heard

the appeal and that no such judge has requested that a vote be taken thereon.

/s/ Elaine B. Goldsmith
Clerk

APPENDIX D

CONNECTICUT WORKERS' COMPENSATION STATUTE EXCERPTS

Conn. Gen. Stat.

§ 31-290 Obligations not to be evaded.

No contract, expressed or implied, no rule, regulation or other device shall in any manner relieve any employer, in whole or in part, of any obligation created by this chapter, except as herein set forth. (1961, P.A. 491, § 43)

§ 31-290a. Discharge or discrimination prohibited. Right of action

(a) No employer who is subject to the provisions of this chapter shall discharge, or cause to be discharged, or in any manner discriminate against any employee because the employee has filed a claim for workers' compensation benefits or otherwise exercised the rights afforded to him pursuant to the provisions of this chapter.

(b) Any employee who is so discharged or discriminated against may either: (1) Bring a civil action in the superior court for the judicial district where the employer has its principal office for the reinstatement of his previous job, payment of back wages and reestablishment of employee benefits to which he would have otherwise been entitled if he had not been discriminated or discharged and any other damages caused by such discrimination or discharge. The court may also award punitive damages. Any employee who prevails in such a civil action shall be awarded reasonable attorney's fees and costs to be taxed by the court; or (2) file a complaint with the chairman of the workers' compensation commission alleging violation of the provisions of subsection (a) of this section. Upon receipt of any complaint, the chairman shall select a commissioner

to hear the complaint, provided any commissioner who has previously rendered any decision concerning the claim shall be excluded. The hearing shall be held in the workers' compensation district where the employer has its principal office. After the hearing, the commissioner shall send each party a written copy of his decision. The commissioner may award the employee the reinstatement of his previous job, payment of back wages and reestablishment of employee benefits to which he otherwise would have been eligible if he had not been discriminated against or discharged. Any employee who prevails in such a complaint shall be awarded reasonable attorney's fees. Any party aggrieved by the decision of the commissioner may appeal the decision to the appellate court.
(1984, P.A. 84-300, § 1)

APPENDIX E

RESPONDENT'S COMPLAINT FILED IN CONNECTICUT SUPERIOR COURT

RET. 5/27/86

CHRISTINE BALDRACCHI	)	SUPERIOR COURT
v.	)	J.D. OF TOLLAND/ ROCKVILLE
PRATT & WHITNEY AIRCRAFT	)	MAY 2, 1986

COMPLAINT

1. This action is brought pursuant to General Statute § 31-290A.

2. The plaintiff, Christine Baldracchi, commenced her employment with the defendant, Pratt & Whitney Aircraft division of United Technologies in May of 1974.

3. On or about March 28, 1984, plaintiff suffered an injury while in the employ of the defendant. In June of 1984, plaintiff underwent a lumbar discectomy at several levels.

4. Due to the aforesaid injury, plaintiff filed a claim with the Workers' Compensation Commissioner for the First District and has been receiving benefits thereunder.

5. On February 13, 1986, the plaintiff received a discharge notice which indicated that she was discharged for repeated willful misconduct and for refusal of available work.

6. The plaintiff has been denied her termination benefits and vacation pay.

7. Defendant's action is in violation of General Statute § 31-290A in that it discharges plaintiff for refusing available work when, in fact, the positions offered to the plaintiff had to be rejected by her because her injuries make it impossible for her to perform certain tasks. In addition, her record is improper inasmuch as she had no willful misconduct.

WHEREFORE, THE PLAINTIFF CLAIMS:

1. Purging of plaintiff's employment record regarding willful misconduct;

2. Payment of termination benefits and vacation pay;

3. Reasonable attorney's fees;

4. Punitive damages;

5. Such other relief as may be provided by statute.

/s/ Abbot B. Schwebel
Commissioner of the Superior Court

APPENDIX F
SUBSIDIARIES AND AFFILIATES OF UNITED TECHNOLOGIES CORPORATION

Name	State of Country of Incorporation
AAC-Westland Limited	United Kingdom
Ancensores Angulo S.A.	Spain
Ansensores y Montacargas Eguren S.A.	Peru
Armorlift S.A.R.L.	France
Ascendes S.A.	Luxembourg
Ascenseurs Clerebout S.A.	Belgium
Ascenseurs Gendre Otis S.A.	Switzerland
Ascenseurs J. Camus	France
Ascenseurs Menard S.A.	France
Ascenseurs W. Sangalli S.A.	France
Ascinter-Otis S.A.	France
Bec Air S.A.	France
Carican Enterprises Company Limited	Taiwan
Carlo Eisner S.p.A.	Italy
Carrier Air Conditioning (Holdings) Limited	New South Wales
Carrier Air Conditioning (New Guinea) Pty. Limited	New Guinea
Carrier Aircon Limited	India
Carrier Experts Service (Central Maylasia) Sdn. Bhd.	Malaysia
Carrier Higashi-Chugoku Co., Ltd.	Japan
Carrier International Sdn. Berhad	Malaysia
Carrier Nishi Chugoku Co. Ltd.	Japan
Carrier Saudi Service Company	Saudi Arabia
Carrier Services Management Pty. Limited	New South Wales
Carrier Taiwan Co., Ltd.	Taiwan
Carrier-U.K. Distribution Limited	United Kingdom

Carter Wind Systems, Inc.	Texas
CEAM Lazio Sud	Italy
CEAM Servizi Adriatica	Italy
CEAM Servizi Firenze	Italy
CEAM Servizi Marenna	Italy
CEAM Servizi Milano	Italy
CEAM Servizi Tirrenica	Italy
CEAM Servizi Torino	Italy
China Tianjin Otis Elevator Company, Ltd.	China
Clymalynx A.G.	Liechtenstein
Companhia Eletromecanica	Brazil
COMPORTEL, S.A.R.L.	Portugal
Daewoo Carrier Corporation	Korea
Daewoo-Sikorsky Aerospace, Ltd.	Korea
Diavia S.p.A.	Italy
Dynamic Turbocharger Services Pty Limited Ltd. (Queensland)	Australia
Dynamic Turbocharger Services Pty. Limited Ltd. (Victoria)	Australia
E.H. Industries Limited	United Kingdom
Eddy Current Testing (Pte.) Ltd.	Singapore
ELEMA S.A.	Spain
Elevadores Canarios S.A.	Spain
Elevadores en Servicio, S.A. de C.V.	Mexico
Entalpia S.A. de C.V.	Mexico
Entrol Systems Sdn. Berhad	Malaysia
Essener Aufzugsfabrik Bruno-Haack G.m.b.H.	West Germany
Essex Electricas Industriales, S.A. de C.V.	Mexico
European Aerospace Company, N.V.	Belgium
FES, Inc.	Pennsylvania
Flohr-0tis Aufzuege G.m.b.H.	West Germany
Freissler Otis G.m.b.H	Austria
Frimar S.r.L.	Italy
Gate France S.A.	France

Gate S.p.A.	Italy
GEAT Gesellschaft fur Angewandte Technologie G.m.b.H.	West Germany
General Aircon Distribution, Ltd.	Japan
Gestem S.A.	Belgium
Grimm-Carrier Ltd.	Thailand
Guide Rails Pty. Ltd.	Australia
Hamilton Standard Stork B.V.	Netherlands
Hebo Fordertechnik G.m.b.H.	West Germany
Heli-Europe Industries Limited	United Kingdom
IAE International Aero Engines A.G.	Switzerland
Industrial Electrical Specialities, Inc.	Illinois
Internacional de Climatizacione S.A.	Spain
International Fuel Cells Corporation	Maryland
Isola Essex AG	Switzerland
Isolants Nord Afrique S.A.	Algeria
Keihin Sobi Kabushiki-Kaisha	Japan
Lakshamanan Isola Ltd.	India
Link-Carlyle Ltd.	Thailand
Manufacturas Especializadas, S.A.	Mexico
Mecanismos Auxiliares Industriales, S.A.	Spain
Microtecnica S.p.A.	Italy
Monitor SNC	France
Mostek France S.A.R.L	France
National Trading Corporation S.A.L.	Lebanon
Nippon Otis Elevator Company	Japan
Normalair-Garrett (Holdings) Limited	United Kingdom
Otis Elevator Company	Kuwait
Otis Elevator Company (India) Limited	India
Otis Elevator Company Limited	South Africa
Otis Elevator Company S.A.E.	Egypt
Otis Elevator Company S.A.L.	Lebanon
Otis Elevator Saudi Arabia Ltd.	Saudi Arabia
Otis Europe S.A.	France
Otis Maroc S.A.	Morocco

P&WC Aircraft Services (A'Asia) Pty. Ltd.	Australasia
Parker Electronics, Inc.	Delaware
Pernas Otis Elevator Company Sdn. Bhd.	Malaysia
Phoenix Travel (Yeovil) Limited	United Kingdom
Prato Ascensori	Italy
Pratt & Whitney Canada Inc.	Canada
Precilec S.A.	France
Q-Carrier (B) Sedirian Berhad	Brunei
Ratier-Figeac	France
Ratier-Forest/G.S.P.	France
Samsung-United Aerospace Co. Ltd.	Korea
SARI Otis (Gestion), S.A.	France
SARI Otis (Maintenance), S.A.	France
Shanghai Tong Hui Carrier A/C Equipment Co. Ltd.	Taiwan
Shenzhen Carrier Service Company	Taiwan
Sito Realty Company, Inc.	Philippines
Societe de Connecteurs de Decazeville, S.A.R.L	France
Societe Nationale d'Etude et de Construction de Moteurs d'Aviation	France
Societe Offranvillaise de Technologie, S.A.	France
Societe Rhodanienne Ascenseurs e Monte-Charge	France
SODICA S.A.	France
Springer Carrier do Nordeste S.A.	Brazil
Springer Carrier S.A.	Brazil
Steelweld S.A.R.L.	France
Stephen Howe Limited	United Kingdom
Stigler Otis, S.p.A.	Italy
Tampereen Talohissi Oy	Finland
Tatung Otis Elevator Company	Taiwan
Telefunken electronic G.m.b.H.	West Germany
The Belton Corporation	Delaware

Trevino Transporte S.A. de C.V.	Mexico
Turbine Overhaul Services Pte. Ltd.	Singapore
Turborreactores, S.A. de C.V.	Mexico
United Technologies Furukawa Corporation	Delaware
United Technologies Gate Espana S.A.	Spain
United Technologies International Operations (Nigeria) Ltd.	Nigeria
United Technologies Saudi Arabia, Ltd.	Saudi Arabia
UT Insurance Company, Ltd.	Bermuda
UTG-United Technologies Grundig G.m.b.H.	West Germany
Val-Lift S.A.	Switzerland
Valmet Otis Oy	Finland
Vegotrans B.V.	Netherlands
Westland Finance Inc.	United States
Westland plc	United Kingdom
Zardoya Otis, S.A.	Spain

Supreme Court, U.S.
FILED
SEP 4 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-318

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

PRATT & WHITNEY AIRCRAFT DIVISION,
UNITED TECHNOLOGIES CORPORATION,
Petitioner,

v.

CHRISTINE BALDRACCHI,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

MEMORANDUM OF THE RESPONDENT

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IN THE

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CHRISTINE BALDRACCHI,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

MEMORANDUM OF THE RESPONDENT

---

1. The question presented here is whether a state statute—or common law rule—which protects *all* employees in the state from being discharged on certain grounds is preempted by § 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 301 ("LMRA"), insofar as the state law applies to employees who are covered by a collective bargaining agreement which provides *contractual* protection against discharges without just cause.

As the petition for certiorari (at pp. 6-7) demonstrates, and as the court below itself acknowledged, the courts of appeals are in disagreement over the proper resolution of this question. Three circuits (the Third,

Tenth and the Second in the decision below) have held that § 301 does not preempt such state-law claims, while two circuits (the Seventh and the Eighth) have reached the contrary conclusion.

We agree with petitioner—and with the court below—that this question is "an 'important' one," Pet. at 6, *quoting* Pet. App. at 1a, which has arisen, and is arising, with great frequency in the lower federal courts and as to which a uniform answer is required.

That being so, we agree that under the standards this Court applies in considering *certiorari* petitions, this case is worthy of the Court's consideration, and that the petition here should be granted.

2. We hasten to add that we believe that the decision below is clearly correct and that the contrary decisions in the circuits are clearly in error; indeed, for the reasons we now develop summary affirmance may well be warranted. In our view the controlling principles have been settled by recent decisions of this Court, and those decisions compel the conclusion that the court below correctly held that suits of the type brought by respondent are not preempted by § 301.

(a) The starting point for analysis is this Court's decision in *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724 (1985), which the Court reaffirmed just last Term in *Fort Halifax Packing Co. v. Coyne*, —— U.S. ——, 55 L.W. 4699, 4704-05 (June 1, 1987). *Metropolitan Life* teaches that the LMRA as a whole is not "intended to disturb the myriad state laws . . . that set minimum labor conditions but [are] unrelated in any way to the processes of bargaining or self-organization." 471 U.S. at 756. Rather

> Congress developed the framework for self-organization and collective bargaining of the [LMRA] within the larger body of state law promoting public health and safety. "States possess

> broad authority under their police powers to regulate the employment relationship to protect workers within the State." Child labor laws, minimum and other wage laws, laws affecting occupational health and safety . . . are only a few examples.
>
> Federal labor law in this sense is interstitial, supplementing it only when it prevents the accomplishment of the purposes of the federal act . . . *When a state law establishes a minimal employment standard not inconsistent with the general legislative goals of the [LMRA], it conflicts with none of the purposes of the Act.* [471 at 756-57; emphasis added]

The instant case involves precisely such a law. Connecticut has chosen to establish a "minimal employment standard" in the form of a state rule which protects Connecticut workers who exercise their right under state law to seek state workers' compensation benefits from being discharged for so doing. That state-law rule applies to *all* workers in the state, whether or not those workers are covered by a collective bargaining agreement which provides contractual protection against such discharges. Such a state-law rule "conflicts with none of the purposes" of the LMRA. To the contrary, as this Court stated in *Metropolitan Life*, in words which the court below correctly recognized are directly applicable here, "It would turn the policy that animated the Wagner Act on its head to understand it to have penalized workers who have chosen to join a union by preventing them from benefiting from state labor regulations imposing minimal standards on nonunion employers." 471 U.S. at 724, *quoted at* Pet. App. at 9a-10a.

(b) The only remaining question is whether employees who exercise their rights under the LMRA to engage in collective bargaining and who secure contractual protections against unjust discharges thereby forfeit their state-law rights otherwise recognized and left intact by

the LMRA. *Allis Chalmers v. Lueck*, 471 U.S. 202 (1985), which the Court reaffirmed last Term both in *Electrical Workers v. Hechler*, —— U.S. ——, 55 L.W. 4694, 4696 & n. 3 (May 26, 1987), and in *Caterpillar Inc. v. Williams*, —— U.S. ——, 55 L.W. 4804, 4806 (June 9, 1987), compel a negative answer to that question.

In *Allis Chalmers*, this Court defined the scope of the preemptive force of § 301, holding that the section preempts state-law causes of action which are "inextricably intertwined with consideration of the terms of the labor contract" or "rooted" in such a contract. 471 U.S. at 213, 220. At the same time, the Court "took care in *Allis Chalmers* to define the precise limits of its holding." *Hechler*, 55 L.W. at 4696 n.3. Thus, *Allis Chalmers* clearly states that § 301 does *not* preempt every claim "tangentially involving a provision of a collective-bargaining agreement[]." *Id.* at 211. In particular, the Court cautioned, § 301 does not preempt "*state rules that proscribe conduct, or establish rights and obligations, independent of a labor contract*"—that is, state rules which "confer[] *nonnegotiable state-law rights on employers or employees* independent of any right established by contract." *Id.* at 212, 213; emphasis added. As the Court subsequently put the point, under *Allis Chalmers* "a plaintiff covered by a collective bargaining agreement is permitted to assert legal rights *independent of* that agreement." *Caterpillar*, 55 L.W. at 4806; emphasis in original.

As we have seen, the instant case involves precisely such an "independent" state-law right enjoyed by all workers in Connecticut. The fact that respondent's union here has secured a just-cause contractual provision which *also* " 'may well prohibit [a] retaliatory discharge,' " Pet. at 18, *quoting Lingle v. Norge Division of Magic Chef, Inc.*, —— F.2d ——, 125 LRRM 2855, 2867 (7th Cir. 1987), and which thus may *parallel* the state-law rule,

in no way changes the fact that respondent is *not* suing on the contract. Rather, respondent is invoking *an entirely separate state statutory right*, one that " 'devolve[s] on [her] as [an] individual worker[], not as [a] member[] of a collective organization.' " *Metropolitan Life*, 471 U.S. at 758. Thus, even if respondent's claim "implicates the same analysis *of the facts* as would an inquiry under the just cause provisions of the agreements,' " Pet. at 13, *quoting Lingle*, 125 LRRM at 2857; emphasis added, it still would not follow, as petitioner contends, that respondent's claim would be preempted by § 301. Rather, under *Allis Chalmers*, respondent is free to invoke state-law rights which exist "independent of any right established by contract." [1]

(c) Finally, it is worthy of note that a closely related issue was raised in *Pan American World Airways v. Puchert*, 472 U.S. 1001 (1985), decided the same Term as *Metropolitan Life* and *Allis Chalmers*. *Pan American* involved an appeal by an employer who argued that the Railway Labor Act preempted a state-law workers compensation retaliatory discharge claim; the employer based that contention on precisely the same considerations that petitioner here asserts in an attempt to justify § 301 preemption. This Court dismissed that appeal for want of a substantial federal question. *Pan American* thus lends further support to the conclusion that the court below correctly concluded that respondent's claim is not

---

[1] In this regard, the instant case is analytically no different than a case in which an employee covered by a collective bargaining agreement sues under a state fair employment practices law which proscribes racial or sexual discrimiation. In such a case, the "analysis of the facts" required to determine the merits of the discrimination claim would parallel the factual inquiry required to prove a breach of the just-cause provision of the agreement. *Metropolitan Life* and *Allis Chalmers* leave no room to doubt that the states are permitted to enact and enforce anti-discrimination laws. *Cf. Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974); *Shaw v. Delta Airlines*, 463 U.S. 85 (1983).

preempted by § 301, and that those courts which have reached the contrary conclusion are in error.[2]

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted and the judgment of the court of appeals affirmed.

Respectfully submitted,

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[2] *Cf. Atchison, Topeka & Santa Fe Railway Co. v. Buell*, —— U.S. ——, 55 L.W. 4363, 4364 (March 24, 1987) ("fact that an injury otherwise compensable under the Federal Employers' Liability Act was caused by conduct that may have been subject to arbitration under the RLA does not deprive an employee of his opportunity to bring an FELA action for damages").

MOTION FILED

SEP 17 1987

(3)

No. 87-318

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

PRATT & WHITNEY AIRCRAFT DIVISION,
UNITED TECHNOLOGIES CORPORATION,
Petitioner,

v.

CHRISTINE BALDRACCHI,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

MOTION FOR LEAVE TO FILE BRIEF AS *AMICA CURIAE* AND MEMORANDUM ON BEHALF OF JONNA LINGLE AS *AMICA CURIAE*

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IN THE

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICA CURIAE*

Jonna Lingle, who has filed a petition for a writ of certiorari, No. 87-259, to review the *en banc* decision of the Seventh Circuit in *Lingle v. Norge,* 823 F.2d 1031 (1987), moves for leave to file this brief as *amica curiae.* Lingle's purpose in filing is to call the Court's attention to jurisdiction and removal problems which may ultimately prevent the Court from reaching the merits if it grants certiorari in this case, and to call the Court's attention to her own petition, which is not scheduled for the same conference as this case and which does not have the jurisdiction and removal problems, and thus is a better vehicle for resolv-

ing the merits issue here. Neither the jurisdiction and removal problems, nor the existence of *Lingle's* petition, are identified in the papers filed by petitioner or respondent.

Because the petition was filed on August 24, 1987, this motion is timely notwithstanding the fact that respondent filed her memorandum on September 4. Supreme Court Rule 36.1. Petitioner's counsel, Peter Healey, Esquire, does not consent to this motion. Respondent's counsel, Laurence Gold, Esquire, neither objects nor consents.

Respectfully submitted,

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QUESTION PRESENTED

In light of the jurisdictional problems in this case, is this the best vehicle for resolving the question of whether section 301 of the Labor-Management Relations Act preempts state retaliatory discharge claims, or should that issue be resolved in another case, *Lingle v. Norge,* No. 87-259, in which the basis for federal jurisdiction is not at issue?

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MEMORANDUM ON BEHALF OF JONNA LINGLE AS *AMICA CURIAE*

Amica curiae Jonna Lingle was the plaintiff-appellant in the decision of the Seventh Circuit, sitting *en banc*, whose conflict with the decision below is cited as a reason why this case should be taken for review. *Lingle v. Norge,* 823 F.2d 1031 (1987). *Amica* agrees that the question presented in the petition merits plenary consideration by this Court, but she is concerned that this may not be the proper case in which to resolve that question because there is a jurisdictional problem in this case, not identified either

in the petition or in the memorandum of the respondent, which may prevent the Court from reaching the important issue that would otherwise be presented.

The complaint in this case alleges that respondent was fired in retaliation for having sought workers compensation benefits. It was originally filed in Connecticut state court, and the only basis for removal was the argument of petitioner Pratt & Whitney that the Connecticut tort of retaliatory discharge is preempted by section 301 of the Labor-Management Relations Act. This district court decided that federal jurisdiction existed because the state claim was preempted, and thus refused to remand to state court. Pet. App. 12a-13a. The court of appeals did not address the question of jurisdiction, but simply decided that the state claim was not preempted, and reversed with instructions to remand to the state courts, given the absence of any remaining federal questions. Pet. App. 4a, 10a.

But as this Court held last Term in *Caterpillar v. Williams,* 107 S. Ct. 2425 (1987), a preemption defense, even under section 301, is not a basis for federal jurisdiction, and consequently is not a basis for removal, unless the employee's state court claim is based on rights granted by the collective bargaining agreement. In *Caterpillar,* by contrast, the employees' claim was based on an alleged separate contract, and the Court held that the employer's section 301 preemption defense based on a claim that any such separate rights were merged into or barred by the collective bargaining agreement, would have to be litigated in state court. *A fortiori,* because respondent here alleged that her rights under state tort law were violated, the petitioner's claim that section 301 preempts the state claim because the collective bargaining agreement contains parallel rights is also an insufficient basis for federal jurisdiction. Indeed, *Caterpillar* is so clearly dispositive that either sum-

mary affirmance or denial of certiorari may be appropriate for that reason, although the reason for remanding to state court would be jurisdictional, rather than because the preemption defense fails, as the Second Circuit held.

This argument is more fully developed in a petition for a writ of certiorari in *Willoughby v. Central Illinois Light Company,* No.87-417, filed on September 11, 1987, at 9 to 12, which was prepared by undersigned counsel. Like this case, *Willoughby* presents yet another issue about the propriety of removal, which is that 28 U.S.C. § 1445(c) bars removal of claims arising under the state workers compensation laws, although again the issue was not discussed by the Second Circuit below or by the certiorari papers here. Our concern is that, in the event the Court grants certiorari in this case, and then holds the remaining cases for disposition in light of *Baldracchi,* the Court would be required to consider the propriety of removal and jurisdiction first. If the Court concluded that removal was unwarranted, it would then have to remand the case without ever reaching the merits of the preemption issue presented in the petition, as it did in *Franchise Tax Board v. Laborers Vacation Trust,* 463 U.S. 1 (1983).

In the petition for a writ of certiorari in *Lingle v. Norge,* No. 87-259, by contrast, federal jurisdiction is based on diversity of citizenship, and so the case can only be decided on the merits.[1] In Lingle's view, the preemption issue can be most cleanly and efficiently decided without the presence of the other issues of removal and jurisdiction, and so she urges that, even if the Court does not believe that the jurisdictional issue is so plain as to warrant summary action, the petition here should be held pending a

[1] Unfortunately, the parties did not mention the pendency of the petition in *Lingle.*

decision in *Lingle*. At the very least, Lingle urges that her petition be considered at a conference together with *Baldracchi* and *Willoughby*, and that the Court decide at that time how to handle all these cases and the issues that they present.

CONCLUSION

The petition for a writ of certiorari in this case should be considered at the same conference as the petitions in *Lingle* and *Willoughby*, at which time the Court should decide which case, or which combination of cases, is the best vehicle for resolution of the preemption and other issues involved.

Respectfully submitted,

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MEMORANDUM OF PETITIONER IN RESPONSE TO MOTION OF JONNA LINGLE FOR LEAVE TO FILE BRIEF AS AMICA CURIAE

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MEMORANDUM OF PETITIONER IN RESPONSE TO MOTION OF JONNA LINGLE FOR LEAVE TO FILE BRIEF AS AMICA CURIAE

On September 22, 1987, Counsel of Record for Petitioner received a copy of a Motion for Leave to File Brief as Amica Curiae, which was accompanied by a Memorandum on Behalf of Jonna Lingle as Amica Curiae.[1] In both documents Lingle affirms the importance of the question presented by the petition herein and states that the question merits plenary

[1] Both documents are dated "September 1987," without specifying the day they were written or purportedly filed.

consideration by this Court. She also acknowledges that the question is the same as that presented in her own petition. *See Lingle v. Norge Division of Magic Chef, Inc.*, 823 F.2d 1031 (7th Cir. 1987), *petition for cert. filed* (U.S. Aug. 14, 1987) (No. 87-259).[2]

Lingle contends, however, that there are "jurisdiction and removal problems" in this case which should lead the Court to consider the important question of § 301 pre-emption by granting review in *Lingle* rather than in this case. By this Memorandum Petitioner simply wishes to point out that Lingle's contention is not correct, for the following reasons:

1. This case does *not* involve "defensive" pre-emption of the sort addressed in *Caterpillar Inc. v. Williams*, ___ U.S. ___, 107 S.Ct. 2425 (1987), or in *Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust for Southern Cal.*, 463 U.S. 1 (1983). *Cf.* Lingle Mem. at 2-3. Rather, as does the employer in *Lingle*, Petitioner here contends that Respondent's state-law claim for retaliatory discharge is *completely pre-empted* by LMRA § 301 and must be considered to be a claim for breach of the applicable collective-bargaining agreement, under this Court's precedents culminating in *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985).

2. Lingle's statement that the Second Circuit in this case "did not address the question of jurisdiction" (Lingle Mem. at 2) is incorrect. In the very first words

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[2] At the time it filed its petition in this case on August 24, Petitioner was unaware that Lingle had filed a petition ten days earlier. For that reason alone, Petitioner did not refer to the pending petition in *Lingle*.

of its discussion, the Second Circuit recognized that, in light of Petitioner's contentions, the pre-emption and removal/jurisdiction issues were one and the same (Pet. App. at 4a):

> The resolution of this appeal turns on the question whether section 301 of the LMRA preempts Baldracchi's claim under the Connecticut statute. If it does, the district court acted correctly in denying the motion to remand and applying federal law; dismissal for failure to state a claim upon which relief could be granted was also proper because, under federal law, Baldracchi would first have to utilize the grievance procedure provided in the collective bargaining agreement. Conversely, if section 301 does not preempt her claim under the Connecticut statute, Baldracchi has a right to pursue it in state court, and the district court should have remanded the suit.

3. Finally, 28 U.S.C. § 1445(c) is not an independent bar to removal, as Lingle suggests (Lingle Mem. at 3). If Petitioner is correct that LMRA § 301 totally pre-empts the state law at issue, then for removal and jurisdiction purposes Respondent's claim "is necessarily *federal* in character" *Metropolitan Life Insurance Co. v. Taylor,* 481 U.S. ___, ___, 107 S.Ct. 1542, 1546 (1987) (emphasis supplied), and not a purported state-law claim of any sort. Also, and in any event, Respondent's retaliatory discharge claim is not an "action . . . arising under the [state] workmen's compensation laws" within the meaning of 28 U.S.C. § 1445(c). *See Lingle, supra,* 823 F.2d at 1038-1039 and n.9.

CONCLUSION

For the reasons stated herein and in its Petition, Petitioner respectfully prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

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